

The 24th February, 1977

No. 539-4Lab/77/4964.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, in respect of the Labour Court, dispute between the workmen and the management of M/s Ambala Public Carriers Operators Union, Ambala City.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 74 of 1974

between

SHRI GURBAX SINGH WORKMAN AND THE MANAGEMENT OF M/S. AMBALA PUBLIC
CARRIERS OPERATORS UNION, AMBALA CITY

AWARD

By Order No. ID/AMB/353-B-74/35421.—25. dated 17th October, 1974 of the Governor of Haryana, the following dispute between the management of M/s Ambala Public Carriers Operators Union, Ambala City, and its workman Shri Gurbax Singh, was referred to this Court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Gurbax Singh was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in this court in response to the usual notices of reference sent to them and filed their pleadings?

The workman alleged,—*vide* claim statement filed by him in conformity with the notice of demand served by him on the management that his services had been terminated by the later on 1st May, 1974 without assigning any reasons and without their holding any enquiry and that he was entitled to reinstatement with full back wages and continuity of service.

The management pleaded,—*vide* written statement filed by them that they were not an industry and there was no relationship of employers and employees between the parties and Shri Gurbax Singh has no cause of action against them. Quite inconsistent with this plea they admitted that Shri Gurbax Singh worked as their Clerk till 31st March, 1974 and that he was paid wages even for the month of April, 1974 even though he did not work during this month. They stated that he was not a workman within the definition of this term as given in section 2(s) of the I. D. Act and that he was an old man of 75 years of age with weak eyesight and was as such physically unable to work. They resisted the claim of the workman on the additional ground that the reference was bad in law and the Labour Court had no jurisdiction to deal with it.

The workman controverted the pleas of the management and reiterated the allegations made in the claim statement,—*vide* rejoinder filed by him with the result that the following issues were framed on pleas of the parties,—*vide* order, dated 24th November, 1975:—

1. Whether the respondents are an Industry?
2. If yes, whether Shri Gurbax Singh was not a workman with the respondents?
3. Whether the termination of services of Shri Gurbax Singh was justified and in order? If not, to what relief is he entitled?

I have heard authorised representatives for the parties and seen the records. I decide the issues as under —

Issues Nos. 1 and 2.—Shri Bhagwan Singh Manager of the management concerned examined as M.W.I. admitted that the Union concerned has engaged in the business of the booking of the goods on commission of Rs. 2/- per truck and that they employed the applicant 4 or 5 years ago. The management admitted having employed Shri Gurbax Singh as a Clerk,—*vide* paragraph 2 of the written statement filed by them. It is thus obvious from the admission found made in the written statement and in the statement of Shri Bhagwan Singh, that the respondent were an Industry and Shri Gurbax Singh was a workman within the definitions of these terms as given in section 2(j) and 2(s) of the I.D. Act respectively as under:—

“Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

“Workman” means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual supervisory, technical or clerical work for hire or reward, whether the terms of employment be express, or implied, and for the purpose or any proceeding under this Act, in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge, or retrenchment has led to that dispute; but does not include such person. I, thus decide these issues in favour of the workman.

Issue No. 3.—The management admittedly did not reply the notice of demand, dated 16th May, 1974 served on them. It was for the first time in the written statement, dated 8th May, 1975 that they set up a plea of the physical inability of the workman to discharge his clerical duties. They in order to prove this plea examined only their Manager Shri Bhagwan Singh who deposed that the management terminated the services of the workman on account of his inability to read and write due to weak eye-sight. They did not examine Medical Officer in support of such a plea. They did not make such a suggestion in order to give him an opportunity to put forth his explanation and to state his own case. In view of the paucity of evidence on behalf of the management and all the facts and circumstances of the case stated above, including their failure to put in suggestion to the workman in respect of his physical inability of discharge his duties. I am not prepared to rely on the solitary oral statement of Shri Bhagwan Singh that the vision of the workman of so weak as to render him physical incapable of discharging his duties. I thus hold that the pleas of the management remained unsubstantiated and the verbal order of the termination of service of workman was unjustified.

The workman admitted his age to be 72 years while denying that his eye-sight was weak.—*vide* rejoinder filed by him. I do not consider it proper and just to reinstate the workman in service even at this old stage, when the normal age of retirement of a public employee is 58 years. It would rather be reasonable under these circumstances to compel the management to take the workman on duty even at such an old age, I, therefore, in view of all the facts and circumstances of the case consider it just and proper to direct payment of a compensation of a sum of Rs. 5,000 to him by the management. I order accordingly and decide this issue with these findings.

I answer the reference while returning the award in these terms.

Dated the 6th January, 1977.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 48, dated 10th January, 1977.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court Haryana,
Rohtak.

The 14th Mach, 1977

No. 1998-4Lab-77/6441.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s Modern Straw Board Mills (P) Ltd., Jatheri (Sonapat)

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 3 of 1976

between

SHRI NAND KISHORE WORKMAN AND THE MANAGEMENT OF M/S MODERN STRAW
BOARD MILLS (P) LTD., JATHERI (SONEPAT)

AWARD

By order No. ID/RTK/11-A-75/2275 dated 19th January, 1976 of the Governor of Haryana, the following dispute between the management of M/s Modern Straw Board Mills (P) Ltd., Jatheri (Sonapat) and its workman Shri Nand Kishore, was referred to this Court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Nand Kishore was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in this Court, in response to the usual notices of reference served on them and filed their pleadings.

Whereas the workman concerned alleged,—*vide* claim statement filed by him, that he being in service of the management concerned for about 6½ months prior to 19th October, 1975 on wages of Rs 150 per mensem his service had been illegally terminated by the management w.e.f. 19th October, 1975 without sufficient cause and without their holding any enquiry, the management pleaded that the workman concerned was employed purely on temporary basis on 20th August, 1975 as a learner on daily wages of Rs 5 per day and that he abandoned his job voluntarily. w.e.f. 18th October, 1975. The management further stated that the workman remained absent on 28th August, 1975 for half a day and on 11th September, 1975 for full day and on 17th September, 1975 for half day and on 8th October, 1975 for full day and received payment from them on 1st November, 1975 in full and final settlement of all his claim against them.

The following issues were thus framed by me on pleas of the parties,—*vide* order, dated 17th August, 1976 :—

1. Whether the workman was receiving Rs 5 per day as his wages, as a helper?
2. Whether the workman abandoned his job voluntarily of his own accord on 18th October, 1975 and received his dues in full and final settlement of all his claims?
3. If not, whether the termination of services of Shri Nand Kishore was justified and in order? If not, to what relief is he entitled?

I have heard Shri N. L. Kanodia, Chairman of the Board of Directors of the management concerned and Shri Nand Kishore workman, with reference to the evidence led by the parties. I decide the issues as under:—

Issues Nos. 1 to 3.—These issues being interconnected shall be disposed of and decided by me together. The management in order to prove their plea of the employment of the workman on purely daily wages examined Shri Rajinder Kumar MW-1 and his father Shri N. L. Kanodia, Chairman of the Board of Directors. Shri Rajinder Kumar deposed that reference to the records relating to the attendance of the employees that the workman joined the services of the management on 20th August, 1975 and that he worked from that date to 23rd August, 1975 from 25th August, 1975 to 29th August, 1975, 1st September, 1975 to 6th September, 1975, 8th September, 1975, to 10th September, 1975, 12th September, 1975 to 13th September, 1975, 15th September, 1975, 20th September, 1975, 22nd September, 1975 to 27th September, 1975, 29th September, 1975 to 30th September, 1975, 1st October, 1975 to 7th October, 1975, 9th October, 1975 to 11th October, 1975, 15th October, 1975 to 17th October, 1975 and that he absented himself from duty thereafter. He gave out that the workman remained absent for half day on 28th August, 1975 and for half a day on 17th January, 1975, and that he received his wages at the flat rate of Rs 5 per day. Shri N. L. Kanodia, Chairman examined as MW-2 deposed that the workman Shri Nand Kishore was employed on purely casual and temporary basis and that he remained present on duty intermittently.

The workman appearing as his own witness rebutted the evidence led by the management and stated that he regularly attended his duties w.e.f. 1st April, 1975 the date of his joining the service of the management on permanent monthly basis and that he may have remained absent on an average only for about a day or two days in a month due to his illness. He added that he was never allowed any weekly holiday or any sick leave. He denied the suggestion that the factory run by the management was seasonal or that he worked only during seasons.

This is all the evidence led by the parties. While taking judicial notice of the facts found disclosed by the calendars and list of holidays published by the Haryana Government, I find that 24th August, 1975, 7th September, 1975, 14th September, 1975, 21st September, 1975, 28th September, 1975, 5th October, 1975 and 12th October, 1975 were holidays on account of Sundays and 14th October, 1975 was a holiday on account of Dusshara festival and 2nd October, 1975 was a holiday on account of the birth of Mahatma Gandhi. It would thus appear that the break in service of the workman, shown by the management,—*vide* testimony of Shri Rajinder Kumar was not on account of the absence of the workman himself or nature of his duties being on purely temporary daily basis but was on the other hand the result of the aforesaid holidays falling in between the days when he admittedly remained on duty excepting for 30th August, 1975 and 11th September, 1975 when he himself admitted to have remained absent on account of his illness. The management thus adopted this clever device of showing the employment of the workman on casual daily basis even though he is proved to have served them continually on permanent basis right from 20th August, 1975 to 17th October, 1975 with the exception of two days when he has to unavoidably remain absent on account of his illness.

Shri Rajinder Kumar admitted that no letter of appointment was ever issued in respect of the temporary casual appointment of the workman on daily wages and that no note in writing was made in this connection in any other record. In absence of any documentary evidence the continued attendance of the workman on duty

from 20th August, 1975 to 17th October, 1975 leads to a presumption that he had been employed on a regular monthly wages basis and not on tempoary causal daily wages. A clumsy attempt made by the management, to turn the holidays legally admissible to the workman to days of his absence unmindful of the possibility of disclosure of the correct facts from the gregorious calendars and the list of holidays, betrayed their anxiety to put forth false and fabricated story to deprive the workman of his legal rights.

The statement of Shri Rajinder Kumar that the factory run by them was seaonal and that the workman was employed only for working during season, is obviously an afterthought in view of the absence of such plea in the written statement at taken from any angle the story put forth by the managemet is tissue of lies, concocted by them to make unwanted gains for themselves at the cost of the workman. Voucher Exhibit M-1 prepared by Shri N. L. Kanodia in his own handwriting showing payment of the workman of a sum of Rs 60 on 1st December, 1975 in full and final settlement of his dues with an averment that he left the job of his own accord, purporting to be signed by him (Workman) is again a clumsy attempt in the same direction, and in view of the denial of workman of his signatures thereupon, it cannot be said to have been duly proved to be under his signatures. Above all it has never been heard of a managemet, writting of fact in the Voucher that the workman left the job of his own accord and such an abnormal averment found in the voucher Exhibit M-1 leads to a conclusion beyond doubt to its falsity and fabrication.

Considered from any angle the story put forth by the mangement is proved to be false by their own evidence and the facts and circumstances of the case stated above in detail. I, thus while relying on the statement of the workman and the case put forth by him, decide these issues in his favour with a finding that he was employed by the management on permanent basis with their liability to pay him wages every month and he did not abandon his job voluntarily and that his services were terminated by the management illegally on 18th October, 1975 and that he is entitled to reinstatement with full back wages and continuity of service. I accordingly answer the reference in these terms.

Dated 28th February, 1977.

MOHAN LAL JAIN,
Presiding Officer,
Labqur Court, Haryana.
Rohtak.

No. 394, dated 2nd March, 1977

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated 28th February, 1977.

MOHAN LAL JAIN
Presiding Officer,
Labour Court, Haryana,
Rohtak.

The 22nd March, 1977

No. 1995-4Lab-76/7044.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Shree Metals (P) Ltd., Kundli.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, LABOUR, COURT, HARYANA,
ROHTAK

Reference No. 11 of 1976

between

SHRI RATTAN LAL WORKMAN AND THE MANAGEMENT OF M/S. SHREE METALS
(P) LTD, KUNDLI

AWARD

By order No. ID/RTK/367 A-75/6835, dated 13th February, 1976 of th: Governor of Haryana, the following dispute between the management of M/s. Shree Metals (P) Ltd., Kundli and its workman Shri Rattan Lal, was referred to this Court, for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Rattan Lal was justified and in order? If not, to what relief is he entitled?

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and filed their pleadings.

Whereas the workman concerned alleged, that his services were terminated by the management with effect from 1st December, 1975 without sufficient cause and without their holding an enquiry against him and he was entitled to reinstatement with full back wages at the rate of Rs. 170 P.M. last drawn by him, the management pleaded that he himself voluntarily resigned his job on 29th November, 1975,—*vide* written resignation submitted by him. They stated that the resignation was duly accepted by them and the order of acceptance of the resignation was conveyed to him,—*vide* letter dated 29th November, 1975 sent to him under postal certificate and that his dues were remitted to him,—*vide* Money Order.

The following issues were thus framed on pleas of the parties,—*vide* my order dated 5th June, 1976 :—

1. Whether the workman resigned his job and the resignation was duly accepted and the order of acceptance of the resignation was conveyed to him?
2. If not, whether the termination of his services is justified and in order? If not, to what relief is he entitled?

The management in order to prove issue No. 1 examined their Time Keeper Shri Sultan Singh and led no other evidence. Shri Sultan Singh deposed that he was called by Shri R.L. Jain Manager in his office and that Shri Rattan Lal workman present there signed the resignation Exhibit M-1 scribed by him (Sultan Singh) after he (Sultan Singh) had been told by Shri R. L. Jain that the workman wanted to resign his job on account of his personal requirement in agriculture. He added that Shri R.L. Jain accepted the resignation M-1,—*vide* his endorsement Exhibit M-1/A and told about it to the workman in his presence and that the management sent to the workman Rs. 128-65 due to him,—*vide* Money-Order coupon Exhibit M-2.

The workman appeared as his own witness in rebuttal of the statement of Shri R.L. Jain referred to above and gave out that he never submitted the resignation Exhibit M-1 before the management and that the latter had obtained his signatures on four blank papers including Exhibit M-1, in the year 1972 at the time of his appointment and that they thus fabricated the resignation Exhibit M-1 subsequently by writing the subject over his signatures.

It is admitted, on both sides, that the management failed to examine Shri R.L. Jain, their Manager who is alleged to have been told by the workman concerned that he wanted to resign his job and who is further stated to have asked Shri Sultan Singh to scribe the resignation on behalf of Shri Rattan Lal workman. The solitary statement of Shri Sultan Singh Time Keeper thus remained uncorroborated and no explanation was put forth for failure of the management to examine Shri R.L. Jain. The withholding of such a primary evidence by the management leads to an inference against them that the case put forth by them is false and fabricated and the story put forth by the workman is correct. It would further be interesting to note that the resignation Exhibit M-1 is undated and there is no documentary evidence on record of the management ever having conveyed its acceptance to the workman concerned, either on 29th November, 1975 or thereafter, in writing and this circumstance further lends support to the conclusion already arrived at by me.

I, thus placing no reliance on the solitary statement of Shri Sultan Singh believe the statement of the workman concerned and decide issue No. 1 against the management.

In view of my findings on issue No. 1 the result is that the termination of services of the workman by the management is unjustified and he is entitled to reinstatement with full back wages with effect from 1st December, 1975 @ Rs. 170 last drawn by him. I decide issue No. 2 accordingly and answer the reference while returning the award in these terms.

Dated 28th February, 1977.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 391 Dated 2nd March, 1977

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,
Presiding Officer,
Labour Court, Haryana,
Rohtak.